

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
Triangle Communication System, Inc.	)	DA 07-3791
Petition for FCC Agreement to	)	
Redefine the Study Areas of Two Rural	)	
Telephone Companies in Montana.	)	

Reply Comments

Montana Independent Telecommunications Systems  
(MITS)

October 15, 2007

## INTRODUCTION

Montana Independent Telecommunications Systems (MITS) is an organization of rural telecommunications companies headquartered across Montana and serving some of the most remote, sparsely populated, and high-cost areas of the United States.<sup>1</sup> MITS members are all rural landline incumbent telecommunications carriers that have been designated as eligible telecommunications carriers (ETCs).

MITS submits these response comments pursuant to the Public Notice issued August 29, 2007, DA 07-3791. The Wireline Competition Bureau sought comment on a petition by Triangle Communication System, Inc. (TCS), filed pursuant to 54.207 of the FCC rules. TCS requests that the FCC concur with the Montana Public Service Commission's (MPSC) decision to redefine the service areas of the two incumbent Montana telephone companies to that of the exchanges within the geographical area encompassed within TCS's entire 800 MHz cellular license. The two rural incumbent providers, Triangle Telephone Cooperative Association, Inc. (TTCA) and Central Montana Communications, Inc. (CMC), are both members of MITS.

## RESPONSE TO COMMENTS

Two rural telecommunications associations, Montana Telecommunications Association (MTA) and Alaska Telephone Association (ATA), have filed comments opposing the decision of the Montana Public Service Commission to redefine the incumbent carriers' study areas to certain wire centers, all geographically encompassed within TCS's entire 800 MHz cellular licensed area, as separate service areas for purposes of the ETC designation for TCS.

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<sup>1</sup> MITS members are: Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Triangle Telephone Cooperative Association, Central Montana Communications and InterBel Telephone Cooperative.

With few exceptions, the incumbent rural telecommunications providers in Montana are each a member of either MITS or MTA. Membership is more or less evenly split between the two statewide telecommunications associations. No telecommunications provider is a member of both associations.

While MITS and MTA generally speak with a consistent voice in representing the interests of rural incumbent providers, in this particular proceeding, the two associations have taken different approaches.

To our knowledge, MTA has no members at this time that are wireless providers or affiliated with wireless providers. MITS has two members with affiliated companies that provide wireless communications. Both have been designated as ETCs by the Montana Public Service Commission (MPSC). One, TCS, was designated by the MPSC in the State proceeding that immediately preceded this docket.

Without a doubt, preserving, maintaining and advancing universal service is the number one priority for each and every Montana rural ETC. Universal Service is literally the lifeline for communications across rural Montana. Absent federal universal service funding, the challenges of distance, density and demand would make access to even basic telecommunications unaffordable for consumers in our large, sparsely populated state.

Rural carriers in Montana serve areas of our state that have been largely by-passed by the national carriers that focused instead on the more lucrative urban markets. Without universal service support, residents of some areas of the state would have to pay significantly more for telecommunications services than those living in other areas because of factors such as sparse populations and high fixed costs of building a telecom network. Universal service support is vital to ensuring the continued availability and affordability of telecommunications services across vast portions of rural Montana.

Both MITS and MTA were strong advocates before the MPSC for early adoption of administrative rules pertaining to ETC designations and certifications. In February of 2004, the two associations jointly filed a Petition for Rulemaking with the MPSC urging it to initiate a proceeding to adopt ETC rules that would include stringent public interest criteria and service quality standards for ETCs. MITS and MTA suggested that the MPSC:

“analyze any ETC application to ensure that the applicant not be enabled to utilize its designation to “cream skim”...This analysis shall include a consideration of the extent to which an applicant is able to provide service to customers throughout the service area using its own network versus the extent to which the applicant intends to provide service via resale of another carrier’s services.”<sup>2</sup>

The MPSC did initiate a rule making proceeding and in April, 2005, it adopted final ETC rules establishing public interest criteria that included a consideration of the extent to which an ETC is able to provide service to customers throughout the service area using its own network versus the extent to which the applicant intends to provide service via resale of another carrier’s services:

**38.5.3210 DESIGNATION AND MAINTENANCE -- PUBLIC INTEREST (3)**

Consideration of the "public interest" means the commission will consider all known factors regarding the designation of an eligible telecommunications carrier and the maintenance of status as an eligible telecommunications carrier that clearly demonstrate a public benefit or a public detriment, including, but not limited to:

(g) the extent to which the eligible telecommunications carrier is able to provide service to customers throughout the service area using the eligible telecommunications carrier's own network;

(h) the effect that designation or maintenance of status will have on the availability of universal service funds;

(i) the effect that designation or maintenance of status will have on the principles of universal service;

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<sup>2</sup> L-04.07.5 RUL, Petition of Montana Independent Telecommunications Systems and the Montana Telecommunications Association for the Adoption of Rules Pertaining to the Designation of Eligible Telecommunications Carriers, February 14, 2007.

(j) the public convenience, including things such as mobility, quality of service, availability of competition, and market choices; and

(k) public necessity, including factors such as public safety, reliability of service, ability to operate in emergencies.

(4) Any one public interest factor, identified in (3) or otherwise relevant for consideration, is unlikely to be determinative in and of itself, regarding the designation of an eligible telecommunications carrier or the maintenance of status as an eligible telecommunications carrier. A determination of public interest will generally include a consideration and balancing of all relevant factors. (History: [69-3-822](#), MCA; [IMP](#), [69-3-840](#), MCA; [NEW](#), 2005 MAR p. 653, Eff. 4/29/05.)

As recommended by MTA and MITS, the MPSC adopted stringent rules for ETC designations and certifications. The MPSC rules are a positive model for other states. The MPSC established strict initial standards and rigorous continued oversight for carriers seeking to obtain Federal universal service funds. They set the bar high for ETC designations and set firm expectations for ETCs' ongoing compliance with certain regulatory requirements.

Although the MPSC declined, as requested by MTA and MITS, to stay pending ETC proceedings prior to implementing rules, it certainly did nothing to expedite any pending ETC proceeding. TCS filed its testimony in its ETC proceeding before the MPSC in January 2006 – two years after it filed its initial ETC application. The final PSC action, its Order on Reconsideration, was issued only recently – on July 26, 2007.

The TCS proceeding before the state commission was a three-year process during which Montana consumers, located in the exchanges for which TCS holds its 800 MHz FCC license, had little and, in most cases, no access to cellular telecommunications service. They will continue to have no access to service until such time that a wireless carrier determines that it is economically feasible to construct facilities in those remote rural areas.

With universal service funding, TCS has committed to do that. It stands ready to deploy service in those sparsely populated exchanges. In compliance with MPSC rules, it has filed a five-year network expansion plan

with the PSC to expand its wireless footprint in its 800 MHz licensed area to reach 98% of the subscriber locations with a minimum -104 dBm signal strength. It has committed to file quarterly service quality reports and to file network expansion reports on six-month intervals. Even though its 800 MHz licensed area does not stretch to every corner of the exchanges identified for study area redefinition, TCS has indicated that it will seek to obtain FCC licenses for those areas where other wireless carriers have licenses, but have declined to serve.

It cannot, however, realistically expand its service coverage to include the entire study areas of the incumbent carriers. Given the extremely rural areas in the exchanges, it would be difficult to refute TCS's position that it cannot economically serve the entire study areas. Further, TCS does not hold FCC licenses that encompass the entire study areas of the two incumbent carriers.<sup>3</sup>

While TCS does hold a 1900 MHz license that geographically covers some of the additional exchanges of the incumbents, the firmly-set-in-sand-position taken by MTA ignores the economic realities of wireless technology. Not all frequencies and technologies are suited for the provision of universal service in all areas. Equipment and facilities designed to deliver vastly different services are often entirely incompatible and do not necessarily meld to create a ubiquitous cellular network, i.e., 700 MHz versus 800 MHz. The 1900 MHz spectrum has a smaller footprint of coverage per tower. It is not economically feasible for TCS to provide services under its 1900 MHz license in the very large, sparsely populated study areas of the incumbent carriers.

Testimony and evidence submitted by TCS in the MPSC proceeding clarified the reasons that TCS choose not to engage in the resale of services from other providers. No one presented evidence to dispute TCS' decision that it could not vouch for the integrity of the services by using resale. TCS was

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<sup>3</sup> TCS post-hearing Exhibit 1 (filed at MPSC request), D2004.1.6

unwilling to provide services under which it had no service quality oversight. The MPS addressed this issue and accepted TCS's position.<sup>4</sup>

Neither MITS nor any of its members disputes the fact that there have been wireless providers with self-serving agendas whose actions have resulted in the abuse of universal service goals and principles. However, there is not one drop of evidence that would indicate that TCS has any motives other than responding to the cries of rural Montanans for access to cellular communications.

Montana is the fourth largest state in the Nation, yet it has a population of less than one million people. The U.S. Bureau of the Census's data on Montana county population verifies that the counties in the TCS redefinition petition are extremely rural. For example, Phillips County has a population of less than one person per square mile (.90); Blaine County is 1.66; Liberty County is 1.51; and Hill County (with the city of Havre, which is a Qwest exchange and is not included in TCS's redefinition request) has a **huge** 5.76 people/square mile density.<sup>5</sup> These are not urban areas. These are not outlying suburbs of cities and towns. The hubs of these counties are small towns where virtually everyone is on a first name basis. From a national perspective, these are frontier areas. It is no wonder that no other wireless provider has stepped up with a plan for deploying cellular service.

Limiting service area redefinitions in the manner suggested by MTA would make wireless deployment in rural areas cost-prohibitive and would create such significant barriers that consumers living in remote, rural areas may never have access to wireless communications service. That is contrary to universal service principles and goals.

That is not to say that redefinitions of study areas and competitive ETC designations should be granted without a thorough review and public

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<sup>4</sup> In the Matter of the application of Triangle Communication System, Inc., Docket D2004.1.6, Final Order 6723a, p.35; Order on Reconsideration, p.7; TCS responses to discovery in Docket D2004.1.6 DR PSC -007(a), and DR MTA -003(b).

<sup>5</sup> See Exhibit 1, Montana County Population, attached to these comments.

interest determination. To the contrary. The MPSC has conducted a thorough analysis of the testimony and evidence presented in the TCS proceeding and has determined that, in this instance, redefinition is appropriate.

Other state commissions should follow the example of the MPSC by establishing rigorous ETC standards and compliance requirements. Universal service funding (USF) and ETC designations cannot and should not be taken lightly. The parameters established for receipt of USF should be strict. Compliance must be ongoing. Commissions must review network build outs to ensure that consumers have expanded access to telecommunications. There should be no incentives for carriers to “game the USF system” to obtain and use universal service funds for purposes other than those for which it is intended. There is simply too much at risk. Rural Americans and the telecommunications carriers that serve them are dependent on universal service for maintaining affordable telecommunications.

The integrity of the universal service program must be preserved. MITS and its members, including those with wireless affiliates, support the proposal that universal service funds for wireless carriers should not be based on the costs of the incumbent carriers, but rather on the wireless carriers’ own costs. MITS and its members support strong controls of universal service and revocation of ETC designation in instances where there has been intentional misuse and/or abuse of universal service funding. Universal service funds should be utilized to preserve and to advance universal telecommunications service. Those who fail to do so should not be eligible for continued funding.

## **CONCLUSION**

MITS believes that the redefinition of a rural study area for CETC designations should be neither routine nor effortless. It requires a thorough examination and consideration by the State commission. MITS does not take the position, however, that redefinition of study areas for ETC designations



in rural areas is *always* contrary to good public policy. Each case must be examined on its own merits.

The Montana PSC has thoroughly examined the evidence presented in the TCS state proceeding. MTA participated in that proceeding and offered not a single witness to present evidence to the contrary. The MPSC has addressed, in two separate orders, the arguments that MTA now brings before the FCC.

The MPSC has twice affirmed by unanimous votes that TCS's requested redefinition of study areas and its subsequent ETC designation constituted sound public policy.

Respectfully submitted,

// Bonnie Lorang  
General Manager  
Montana Independent Telecommunications Systems

(MITS)

Dated:                      October 15, 2007

